IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32 (2) (b)

Description of Case

W.P. No. 2793 (S/S) of 2001

Date of decision :- 02-11-2006

~~A.F.R. (Approved for Reporting)~~

Not approved for reporting

Date :- 02-11-2006 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Civil Misc. Writ Petition No. 2793 (S/S) of 2001
(Old No. 8799 of 1993)

Naresh Kumar S/o Tungal Singh
R/o village Basari Khader
P.O Laksar, District Haridwar .....Petitioner

Versus

1. District Magistrate, Haridwar.
2. Prabhari Adhikari, Nazarat, Haridwar
3. State of U.P.
4. Revenue Department, Section 4, Lucknow
5. Additional District Magistrate
   (Finance)/ Chairman Selection Committee
   Class IV Employees
   Collectorate, Haridwar
6. Sri Nathi Ram S/o Sri Karam Singh
   49, Yog Ashram, Deopura
   Haridwar
7. Sri Subhash Chandra
   S/o Shri Molharh Singh
   Qr. 10-167 Type 2
   Sector 2, BHEL Ranipur
   Haridwar, District Haridwar
8. Sri Vir Singh S/o Shri Dil Bahadur
   R/o Ni. Mayapur, Haridwar
   District Haridwar .....Respondents

Dated :-02nd November, 2006

Mr. Vinod Sharma, learned counsel for the petitioner.
Mr. Harendra Belwal learned Advocate for the respondent(s).

Hon'ble J.C.S. Rawat, J.

1. By means of this writ petition under section 226 of the Constitution on India, the petitioner has sought the following prayers:-

(i) issue a writ order or direction in the nature of certiorari quashing the selection and appointment of the respondents 6 to 16 on the basis of the selection held on 16.12.1992.

(ii) Issue a writ of mandamus commanding the respondents 1 to 5 to consider the

petitioner for regularization of services in accordance with the Government G.O. and Policy issued from time to time and further be pleased to restrain the respondents to give effect to the results of selection committee on the basis of interview held on 16.12.1992.

(iii) Issue a writ or order as this Hon'ble Court may deem fit and proper under the circumstances of the case.

(iii) Award the costs of the writ petition to from the respondents.

2. The petitioner's case is that in the month of October 1990 he was appointed as 'peon' on daily- wages in the Collectorate Haridwar and he worked there for more than 3 years. The Nazir Sadar, Collectorate, Haridwar prepared a list of 13 sanctioned posts of Class IV employees which were shown as vacant. In order to fill up the sanctioned posts of Class IV employees, an interview was conducted by the Selection Committee under the Chairmanship of respondent no. 5. The name of the petitioner was also sent to the Selection Committee by the employment exchange. The petitioner participated in the interview, but unfortunately he was not selected for the post of 'peon'. Feeling aggrieved by this, the present petition has been filed.

3. Heard learned counsel for the parties and perused the record.

4. It was contended on behalf of the petitioner that the regular selection was conducted and the petitioner had participated in the said selection. The Selection Committee had not taken into consideration the experience as well as the length of service in the same

department. It was contended on behalf of the petitioner that the petitioner was appointed on daily wages and he continued his services for more than three years. He had an experience of three years and as such he should have been considered for the post of ‘peon’ by the competent authority. Learned Standing Counsel refuted the contention. It is well settled position of law that if a person is appointed on a daily wage, the appointment comes to an end at the end of the contract. Similarly, a daily wager can not claim to be made permanent on the basis that he had been working since long on the particular post. Apart this, the petitioner has participated in the interview which was held on 16.12.1992. If the petitioner had participated in the selection process, he has no right to challenge the said selection. It is also well settled position of law that the result of tests on merits cannot be unsuccessfully challenged by the candidates who takes a chance to get selected at the competitive examination and who ultimately found himself to be unsuccessful. It is also to be kept in mind that in this petition, this court is not sitting as a court of appeal and try to reassess the relative merits of the candidates concerned who had not appeared before the competitive examination nor can the petitioner successfully urge before the court that he was given less marks though his performance was better. It is for the competitive examination committee, which amongst others, consists of experts of the department who assess the performance. The performance and the measurement made by the Committee cannot be brought in challenged only on the ground that the assessment was not proper or justified as that would be the function of an appellate court and this court is not sitting as an appellate court over the

assessment made by such an expert committee. **[See (1995) 3 SCC p/ 486, Madan Lal and others Vs. State of J&K and others and AIR 2002 SC p/ 2322, Chandra Prakash Tiwari and others Vs. Shakuntala Shukla].**

5. In view of the foregoing discussion, I am of the view that the present is devoid of merit and is liable to be dismissed.

6. The petition is dismissed accordingly. No order as to costs.

(J.C.S. Rawat, J.)

Dated 02.11.2006

LSR